

(i) The date of such approval; or
 (ii) For stock issuances subject to the offering circular requirements of part 563g of this chapter, the date on which the offering circular was declared effective by the OTS; and

(22) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet any of its regulatory capital requirements.

(b) *Optional provisions.* A Stock Issuance Plan may:

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after the mailing to the members of the reorganizing association and any acquiree association of any proxy statement(s) authorized for use by the OTS. The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

(2) Provide that any insignificant residue of stock of the association not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the OTS's approval;

(3) Provide that the association may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of this section and in § 575.7 of this part to stock shall apply to such units of equity securities unless the context otherwise requires; or

(4) Provide that the association may reserve shares representing up to ten percent of the proposed offering for issuance in connection with an employee stock benefit plan.

(c) *Applicability of provisions of § 563b.500(a) to minority stock issuances.* Notwithstanding § 575.7(d) of this section, § 563b.500(a)(2) and (3) do not apply to minority stock issuances, because the permissible sizes of ESOPs, MRPs, and Option Plans in minority stock

issuances are subject to each of the requirements set forth at paragraphs (a)(3) through (a)(9) of this section. Section 563b.500, paragraphs (a)(4) through (14), apply for one year after the savings association engages in a minority stock issuance that is conducted in accordance with the purchase priorities set forth in part 563b. In addition to the shareholder vote requirement for Option Plans and MRPs set forth at § 563b.500(a)(6), any Option Plans and MRPs put to a shareholder vote after a minority stock issuance that is conducted in accordance with the purchase priorities set forth in part 563b must be approved by a majority of the votes cast by stockholders other than the mutual holding company.

[58 FR 44114, Aug. 19, 1993, as amended at 67 FR 52035, Aug. 9, 2002; 72 FR 35150, June 27, 2007]

§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.

(a) *Charters and bylaws for mutual holding companies*—(1) *Charters.* The charter of a mutual holding company shall be in the form set forth in this paragraph (a)(1) and may include any of the additional provisions permitted pursuant to paragraph (a)(2) of this section.

CHARTER

Section 1: Corporate title. The name of the mutual holding company is _____ (the "Mutual Company").

Section 2: Duration. The duration of the Mutual Company is perpetual.

Section 3: Purpose and powers. The purpose of the Mutual Company is to pursue any or all of the lawful objectives of a federal mutual savings and loan holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and all acts amendatory thereof and supplemental thereto, subject to the Constitution and the laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("OTS").

Section 4: Capital. The Mutual Company shall have no capital stock.

Section 5: Members. [The content of this section 5 shall be identical to the content of the

parallel section in the charter of the reorganizing association, with the following exceptions: (A) Any provisions conferring membership rights upon borrowers of the reorganizing association shall be eliminated and replaced with provisions grandfathering those rights in accordance with 12 CFR 575.5; and (B) appropriate changes shall be made to indicate that membership rights in the mutual holding company derive from deposit accounts in and, to the extent of any grandfather provisions, borrowings from the resulting association. Set forth below is an example of how section 5 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 5 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 575.5.]

All holders of the savings, demand, or other authorized accounts of [insert the name of the resulting association] (the “Association”) are members of the Mutual Company. With respect to all questions requiring action by the members of the Mutual Company, each holder of an account in the Association shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of the member’s account. In addition, borrowers from the Association as of [insert the date of the reorganization or any earlier date as of which new borrowings ceased to result in membership rights] shall be entitled to one vote for the period of time during which such borrowings are in existence. [The foregoing sentence should be included only if the charter of the reorganizing association confers voting rights on any borrowers.] No member, however, shall cast more than one thousand votes. All accounts shall be non-assessable.

Section 6. Directors. The Mutual Company shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen, as fixed in the Mutual Company’s by-laws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate.

Section 7: Capital, surplus, and distribution of earnings. [The content of this section 7 shall be identical to the content of the parallel section in the charter of the reorganizing association, except for changes made to indicate that distribution rights in the mutual holding company derive from deposit ac-

counts in the resulting association, any changes required to provide that the Director of the OTS shall be the approving authority in instances where the charter requires regulatory approval of distributions, and any other changes necessary to accommodate the mutual holding company format. Set forth below is an example of how section 7 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 7 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 575.5.]

The Mutual Company shall distribute net earnings to account holders of the Association on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Director of the OTS, provided that the Mutual Company may establish minimum account balance requirements for account holders to be eligible for distributions of earnings.

All holders of accounts of the Association shall be entitled to equal distribution of the assets of the Mutual Company, *pro rata* to the value of their accounts in the Association, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Mutual Company.

Section 8. Amendment. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting and shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: _____
Secretary of the Association

By: _____
President or Chief Executive Officer of the Association

Attest: _____
Secretary of the Office of Thrift Supervision

By: _____
Director of the Office of Thrift Supervision

Effective Date: _____

(2) *Charter amendments.* The rules and regulations set forth in § 544.2 of this chapter regarding charter amendments and reissuances of charters (including

delegations and filing instructions) shall be applicable to mutual holding companies to the same extent as if mutual holding companies were Federal mutual savings associations, except that, with respect to the pre-approved charter amendments set forth in § 544.2 of this chapter, §§ 544.2(b)(1) and (b)(3) of this chapter shall not apply to mutual holding companies, and mutual holding companies changing their corporate title pursuant to § 544.2(b)(2) of this chapter shall be required to comply with § 575.9(a)(3) of this part as well as § 543.1(b) of this chapter.

(3) *Corporate title.* The corporate title of each mutual holding company shall include the term “mutual” or the abbreviation “M.H.C.”

(4) *Bylaws.* The rules and regulations set forth in § 544.5 of this chapter regarding bylaws (including their content, any amendments thereto, delegations, and filing instructions) shall be applicable to mutual holding companies to the same extent as if mutual holding companies were federal mutual savings associations. The model bylaws for Federal mutual savings associations set forth in the OTS Applications Processing Handbook shall also serve as the model bylaws for mutual holding companies, except that the term “association” each time it appears therein shall be replaced with the term “Mutual Company”; section 11(e) (extending leniency to borrowing members) and section 11(f) (rejection of applications for accounts or membership) shall be removed and the remaining paragraphs of section 12 redesignated accordingly.

(5) *Availability of charter and bylaws.* A mutual holding company shall make available to its members at all times in the offices of each subsidiary savings association from which the mutual holding company draws members a true copy of its charter and bylaws, including any amendments, and shall deliver such a copy to any member upon request. Mutual holding companies shall also be subject to the provisions of § 544.8 of this chapter.

(b) *Charters and bylaws of subsidiary savings associations of mutual holding companies.* Except as specified otherwise by the OTS in any notice of intent not to disapprove a mutual holding

company reorganization or in any regulation or order, each subsidiary savings association of a mutual holding company shall be subject to the same rules and regulations regarding charters and bylaws as are applicable to stock savings associations that are chartered by the OTS, 12 CFR part 552, or by the appropriate state chartering authority, as the case may be, *provided* that the charter of each resulting association, each acquiree association, and each mutual savings association that is acquired by a mutual holding company shall contain the provision set forth below:

In any situation in which the priority of the accounts of the association is in controversy, all such accounts shall, to the extent of their withdrawable value, be debts of the association having at least as high a priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

(c) *Optional charter provision limiting minority stock ownership.* A federal resulting association or federal acquiree association that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time of such minority stock issuance, or at any time during the five years following a minority stock issuance that such association conducts in accordance with the purchase priorities set forth in 12 CFR part 563b, include in its charter the following provision. For purposes of this charter provision, the definitions set forth at § 552.4(b)(8) of this chapter apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The federal resulting association or federal acquiree association may adopt the charter provision after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the association might adopt such a charter provision.

Beneficial Ownership Limitation. No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the association

held by persons other than the association's mutual holding company. This limitation expires on [insert date within five years of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan that is exempt from the approval requirements under § 574.3(c)(1)(vii) of the Office's regulations.

In the event a person acquires stock in violation of this section, all stock beneficially owned by such person in excess of 10 percent of the stock held by stockholders other than the mutual holding company shall be considered "excess shares" and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

(d) *Approval of charters and bylaws of mutual holding companies and their savings association subsidiaries in connection with Reorganization Plans.* (1) Issuance by the OTS of a notice of intent not to disapprove a reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall be deemed to constitute:

(i) Approval pursuant to § 575.3(d) of this part and this section for the reorganizing association to amend its charter and bylaws in their entirety to read in the form of the mutual holding company charter and bylaws proposed in the Reorganization Notice (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section);

(ii) If the Reorganization Plan provides that the resulting association is to be federally chartered, approval pursuant to 12 U.S.C. 1464 (a) and (e) and §§ 552.2–1 and 552.2–2 of this chapter of the organization of the resulting association and the proposed charter and bylaws of such association (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or by paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section); and

(iii) If the Reorganization Plan provides that the acquiree association is to be federally chartered, approval pur-

suant to § 552.4 of this chapter of the amendment of the existing charter of the acquiree association in its entirety to read in the form of the proposed charter and bylaws of such association (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section).

(2) In the event the charter and bylaws of a mutual holding company and of any federally-chartered resulting association or acquiree association are approved pursuant to paragraph (c)(1) of this section due to failure of the OTS to disapprove a Reorganization Notice within the time prescribed in § 575.3(b) of this part, such approval shall be subject to the condition that such charter(s) and bylaws shall conform in every particular to the model charter(s) and bylaws for mutual holding companies and/or federal stock savings associations, as the case may be, as set forth in the OTS's regulations.

(3) Promptly after approval of the amendment of the charter of a reorganizing association to read in the form of a mutual holding company charter pursuant to paragraph (c)(1) of this section, the OTS shall issue an executed copy of such charter to the reorganizing association. Such charter shall not become effective until consummation of the Reorganization Plan, at which point in time it shall replace and nullify the charter of the reorganizing association. The charter of the reorganizing association shall be surrendered to the OTS within five days after consummation of the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the charter of the mutual holding company shall become immediately null and void and shall be returned to the OTS within five days.

(4) Promptly after approval of any federal charter for a resulting association pursuant to paragraph (c)(1) of this section or approval of the amendment of any federal charter of an acquiree association pursuant to paragraph (c)(1) of this section, the OTS shall issue an executed copy of such charter(s) to the reorganizing association and/or the acquiree association, as the case may be.

(i) Prior to consummation of the Reorganization Plan, the resulting association (whether chartered under federal or state law) shall constitute an interim savings association subsidiary of the reorganizing association and shall not accept any deposits or engage in any other business activities except for those activities necessary to consummate the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the charter of the resulting association shall immediately become null and void and, if the resulting association is federally chartered, the charter shall be returned to the OTS within five days.

(ii) Any amended charter issued to an acquiree association (whether by the OTS or the appropriate state authority) shall not become effective until consummation of the Reorganization Plan, at which point in time it shall replace and nullify the prior charter of the acquiree association. The prior charter of any federally-chartered acquiree association shall be surrendered to the OTS within five days after consummation of the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the amended charter of the acquiree association shall become immediately null and void and, if the acquiree association is federally chartered, the amended charter shall be returned to the OTS within five days.

(5) Approval of the amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company and of any acquiree association to read in the form of a stock association and approval of the organization of any resulting association and of its charter and bylaws pursuant to paragraph (c)(1) of this section shall be subject to any conditions subsequent that the OTS may impose in connection therewith or with its notice of intent not to disapprove the reorganization.

[58 FR 44114, Aug. 19, 1993, as amended at 61 FR 64021, Dec. 3, 1996; 62 FR 66264, Dec. 18, 1997; 73 FR 39219, July 9, 2008; 73 FR 76939, Dec. 18, 2008]

§ 575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) *Acquisitions*—(1) *Stock savings associations*. A mutual holding company may acquire control of a savings association that is in the stock form, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter and, if the acquisition involves a merger or transfer of assets or liabilities, approval pursuant to §§ 552.13, 563.22, and part 546 of this chapter, as appropriate.

(2) *Mutual savings associations*. A mutual holding company may acquire a savings association in the mutual form by merger of such association into any subsidiary savings association of such holding company from which the parent mutual holding company draws members or into an interim savings association subsidiary of the mutual holding company, provided:

(i) The proposed acquisition is approved by a majority of the board of directors of the mutual association;

(ii) The proposed acquisition is submitted to the mutual association's members pursuant to a proxy statement authorized for use by the OTS and such acquisition is approved by a majority of the total votes of the association's members eligible to be cast at a meeting held at the call of the association's directors in accordance with the procedures prescribed by the association's charter and bylaws;

(iii) The necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter and §§ 552.13, 563.22, and part 546 of this chapter, as appropriate, and any approvals required to form an interim association, to amend the charter and bylaws of the association being acquired, and/or to amend the charter and bylaws of the mutual holding company consistent with 575.6(a) of this part; and

(iv) The approval of the members of the mutual holding company is obtained, if the OTS advises the mutual holding company in writing that such approval will be required.